

REMARKS

Claims 27-80 have been added which include 9 new independent claims. Claim 1-26 remain in the application as originally presented. The Applicant notes the examiner's rejection of Claims 1-26 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,853,621 ("Spear") and respectfully requests reconsideration and withdrawal of said rejection in light of the following discussion.

The Applicant respectfully submits that Claims 1-26 are not anticipated under 35 U.S.C. 102 (b) by the patent cited. In order for Applicant not to be entitled to a patent pursuant to 35 U.S.C. Section 102(b), the following must be true:

"(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or sale in this country, more than one year prior to the date of application for patent in the United States." 35 U.S.C. § 102(b). MPEP § 2133.

The Applicant's Application Serial No. 10/078,142 was filed on February 19, 2002, claiming priority to the Applicant's provisional application filing date of February 22, 2001 pursuant to 35 U.S.C. § 119. Therefore, the Applicant's effective filing date is February 22, 2001.

The examiner has based the 35 U.S.C. § 102(b) rejection on U.S. Patent No. 6,853,621 to Spear et al. ("Spear") This patent was issued on February 8, 2005 and was filed on January 18, 2000, prior to the U.S.P.T.O's November 29, 2000 date for bringing into effect the publication of patent applications 18 months after filing. Therefore, Spear was not published as a pending patent application, and was not "patented or described in a printed publication" as would be required under 35 U.S.C. § 102(b) until its issue date of February 8, 2005, and such date is obviously long after Applicant's effective filing date of February 22, 2001. In order for Spear to

anticipate the Applicant's invention under 35 U.S.C. § 102(b), it would need to have become an issued patent or have been published prior to February 22, 2000. While Spear may have been filed before this date, Spear's filing date is not the relevant date for a Section 102(b) rejection. See MPEP § 706.02(a) (See Subsection II. A.: "If the publication or issue date of the reference is more than 1 year prior to the effective filing date of the application, the reference qualifies as prior art under 35 U.S.C. § 102(b)." Such is not the case here.)

The examiner has not made any assertion or provided any evidence that the Applicant's invention was in public use or sale in the United States prior to February 22, 2000, so there is no basis for the present rejection under 35 U.S.C. § 102(b).


The Applicant respectfully submits that its invention as claimed is not anticipated by Spear. The Applicant therefore respectfully requests that examiner withdraw the rejection of the Applicant's claims 1-26 based on 35 U.S.C. Section 102(b).

The Applicant respectfully submits that the application and claims, as amended, are in condition for allowance. Nonetheless, should the examiner still have any comments, questions or suggestions, the examiner is respectfully requested to telephone the undersigned at the telephone number listed below.

Date: June 14, 2006

Respectfully submitted,

GREENBERG TRAURIG, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Tel: (305) 579-0812
Fax: (305) 579-0717



Manuel R. Valcarcel, Esq.
Reg. No. 41,360